

### Salient Features of Indian Constitution

#### Longiest written constitution:

- Constitution can be classified into written constitution such as that of America or unwritten constitution such as that UK.
- The constitution of India is a written constitution which happens to be the lengthiest written constitution in the world.
- It is comprehensive, elaborate and a detailed document.
- The factors that have contributed to this phenomenon are:
  - geographical factors (vastness of country and diversity),
  - Historical factors (Influence of GoI, 1935),
  - Single constitution for both centre and state and dominance of legal luminaries.

#### Drawn from various sources:

- It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935.
- Ex: structural part from GoI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc
- Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions.
- Ex: Though we borrowed cabinet form of governance from UK, the cabinet is not all-supreme as in the case of UK.

#### Preamble of the constitution:

- The Preamble consists of the ideals, objectives and basic principles of the Constitution.
- The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble.
- It asserts India to be a Sovereign Socialist Secular Democratic Republic
- a welfare state committed to secure justice, liberty and equality for the people
- promoting fraternity, dignity the individual, and unity and integrity of the nation.

- The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

#### **Democratic system:**

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

#### **India is a Republic:**

- The Preamble declares India to be a Republic.
- India is not ruled by a monarch or a nominated head of state.
- India has an elected head of state (President of India) who wields power for a fixed term of 5 years.
- After every 5 years, the people of India indirectly elect their President.

#### **Union of states:**

- Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

#### **Fundamental Rights and duties:**

- The Constitution of India grants and guarantees Fundamental Rights to its citizens.
- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights
- part III of the Constitution deals with those rights which are known as fundamental right.
- The Six FR include-
- Right to Equality;
- Right to Freedom;
- Right Against Exploitation;
- Right to Freedom of Religion;
- Cultural and Educational Right
- Right to Constitutional Remedies
- The fundamental rights are justiciable and are not absolute.

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UNIT - V - INDIAN POLITY

- Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution
- by the 42nd Amendment, 1976 for fundamental duties.

**Directive Principles of State Policy:**

- A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

**Parliamentary System:**

- The Constituent Assembly decided to espouse Parliamentary form of government both for the Centre and the states.
- In Indian parliamentary system, distinction is made between nominal and real executive head.
- The Council of Ministers is responsible before the Lok Sabha,
- The lower house of union parliament.
- There are close relations between executive and legislature.

**Federal structure of government:**

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels.
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- the features of Indian federation
- Written Constitution,
- supremacy of the Constitution,
- division of powers between Union and States,
- bicameral Legislature,
- independent Judiciary, etc. are the features of Indian federation.

- Scholars describe India as a ‘Quasi-Federation’ (K.C. Wheare) or as ‘a federation with a unitary bias, or even as ‘a Unitarian federation.’

#### **Universal adult franchise:**

- All men and women enjoy an equal right to vote.
- Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

#### **Single integrated State with Single Citizenship:**

- India is the single Independent and Sovereign integrated state.
- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

#### **Integrated judicial system:**

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level,
- High Courts at the state level and other courts work under the High Courts.

#### **Independent Judiciary:**

- It is necessary to secure the philosophical foundations of the rule of law and democracy
- the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- the Constitution has ensured complete independence of Judiciary in the matters of administration and finances.

#### **Amending the Constitution of India:**

- Amending the Constitution of India is the procedure of making modifications to the nation’s fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

### **Judicial Review:**

- The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive.
- The Supreme Court of India stands at the peak of single integrated judicial system
- It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

### **Basic Structure doctrine:**

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features
- that cannot be changed or destroyed through amendments by the parliament.
- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as “basic” or “essential” by the Courts in numerous cases, and have been incorporated in the basic structure.
- In Indira Gandhi v. Raj Narayan case and also in the Minerva Mills case, it was witnessed that the claim of any particular feature of the Constitution to be a “basic” feature would be determined by the Court in each case that comes before it.

### **Secularism:**

- In no other country of the world so many religions co-exist as in India.
- In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion,
- nor can the State compel anybody to pay taxes for the support of any particular religion.

MANIDHANAHEYAM FREE IAS ACADEMY – TNPSC - PRELIMINARY EXAM  
UNIT – V – INDIAN POLITY

- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it.
- The Constitution also grants various cultural rights to minorities.

**Independent bodies:**

- Constitution has setup various independent bodies and vested them with powers to ensure the constitutional provisions.
- Ex: Election Commission, CAG, Finance Commission.
- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

**Emergency provisions:**

- Indian constitution contains elaborate provisions to deal with those challenges that pose a threat to the country's security and unity
- Local government
- Through 73<sup>rd</sup> and 74<sup>th</sup> amendment act, we have rural and urban local bodies as an additional constitutional tier of the government structure.
- This section fulfils the dream of Gandhi to see a self-functioning villages in India.

**Parts of Indian Constitution:**

- **PREAMBLE**
- **PART I:** The Union and Its Territory
- **PART II:** Citizenship
- **PART III:** Fundamental Rights
- **PART IV:** Directive Principles of State Policy
- **PART IVA:** Fundamental Duties
- **PART V:** The Union
  - **CHAPTER I:** The Executive
  - **CHAPTER II:** Parliament
  - **CHAPTER III:** Legislative Powers of the President

- **CHAPTER IV:** The Union Judiciary
- **CHAPTER V:** Comptroller and Auditor-General of India
- **PART VI:** The States
  - **CHAPTER I:** General
  - **CHAPTER II:** The Executive
  - **CHAPTER III:** The State Legislature
  - **CHAPTER IV:** Legislative Power of the Governor
  - **CHAPTER V:** The High Courts in the States
  - **CHAPTER VI:** Subordinate Courts
- **PART VII:** The States in Part B of the First Schedule
- **PART VIII:** The Union Territories
- **PART IX:** The Panchayats
- **PART IXA:** The Municipalities
- **PART IXB:** The Co-Operative Societies
- **PART X:** The Scheduled and Tribal Areas
- **PART XI:** Relations between the Union and the States
  - **CHAPTER I:** Legislative Relations
  - **CHAPTER II:** Administrative Relations
- **PART XII:** Finance, Property, Contracts and Suits
  - **CHAPTER I:** Finance
  - **CHAPTER II:** Borrowing
  - **CHAPTER III:** Property, Contracts, Rights, Liabilities, Obligations and Suits
  - **CHAPTER IV:** Right to Property
- **PART XIII:** Trade, Commerce and Intercourse within the Territory Of India
- **PART XIV:** Services under the Union and the States
  - **CHAPTER I:** Services
  - **CHAPTER II:** Public Service Commissions
- **PART XIVA:** Tribunals

MANIDHANAHEYAM FREE IAS ACADEMY – TNPSC - PRELIMINARY EXAM  
UNIT – V – INDIAN POLITY

- **PART XV:** Elections
- **PART XVI:** Special Provisions Relating to Certain Classes
- **PART XVII:** Official Language
  - **CHAPTER I:** Language of the Union
  - **CHAPTER II:** Regional Languages
  - **CHAPTER III:** Language of the Supreme Court, High Courts, etc.
  - **CHAPTER IV:** Special Directives
- **PART XVIII:** Emergency Provisions
- **PART XIX:** Miscellaneous
- **PART XX:** Amendment of the Constitution
- **PART XXI:** Temporary, Transitional and Special Provisions
- **PART XXII:** Short Title, Commencement, Authoritative Text in Hindi and Repeals

**Schedules:**

**First Schedule:**

- It lists the **states and union territories** and their corresponding territories.
- There are **28 states and 8 Union territories** in the country.

**Second Schedule:**

- It outlines the **provisions for emoluments, allowances, privileges** and so on of the following:
  - The President of India
  - The Governors of States
  - The Speaker and the Deputy Speaker of the Lok Sabha
  - The Chairman and the Deputy Chairman of the Rajya Sabha
  - The Speaker and the Deputy Speaker of the Legislative Assembly in the states
  - The Chairman and the Deputy Chairman of the Legislative Council in the states
  - The Judges of the Supreme Court
  - The Judges of the High Courts
  - The Comptroller and Auditor General of India



### Third Schedule:

- This provides for the forms of oaths or affirmations including
- The Union and state ministers
- The candidates for election to the Parliament and the state legislature
- The members of Parliament and state legislature
- The judges of the Supreme Court and High Courts
- The Comptroller and Auditor General of India

### Fourth Schedule:

- It provides for the **number of seats** allocated to each state or union territory in the Council of States (Rajya sabha).
- **Highest** - Uttar Pradesh -31
- **Lowest** – Sikkim ,Nagaland, Mizoram -1
- Tamil Nadu -18

### Fifth Schedule:

- It deals with the administration and control of **Scheduled Areas and Scheduled Tribes.**

### Sixth Schedule:

- It deals with administering Tribal Areas in the States of **Assam, Meghalaya, Tripura, and Mizoram.**

### Seventh Schedule:

- The **7th Schedule of Indian Constitution has three lists**
- the Union list, state list, and concurrent list that show the division of power between the Union and States concerning certain subjects.
- The Union List has a total of 97 subjects,
- the State List has 66 subjects,
- the Concurrent List has 47 Subjects.
- It includes **three lists for determining the legislative authority** for various subject matters.
- **Union List** includes subjects of national importance, such as defense and foreign affairs, for which only the central government can make laws.

- **State List** includes subjects of state and local importance, such as police and public health, for which only state governments have the authority to make laws.
- **Concurrent List** includes subjects of joint importance, such as education, marriage, etc for which both the central and state governments can make laws.

#### **Importance:**

- The Parliament has the authority to enact legislation pertaining to residual Subjects or those that are not included in any of the three lists.
- Even if an issue is listed on the State List, Parliament has the authority to pass laws pertaining to it for any area of India's territory that is not part of a state.
- The Union List has priority over the State List and the Concurrent List, and the Concurrent List has priority over the State List.
- The Union List should take precedence over the Concurrent List in the event of a conflict.
- The Concurrent List should take precedence over the State List whenever there is a dispute.
- If there is a disagreement between central law and a state law on a topic listed in the Concurrent List, central law will prevail.
- There is, however, one exception. If the state law has been submitted to the president for review and received his approval, it takes precedence in that state.
- However, the Parliament would still have the authority to amend that law by passing another one on the same subject later.

#### **Eighth Schedule:**

- The **eighth schedule** includes the recognition of the following **22 languages**:
- Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Sindhi,

Tamil, Telugu, Urdu, Bodo, Santhali, Maithili and Dogri are the 22 languages presently in the eighth schedule to the Constitution.

- Of these languages, 14 were initially included in the Constitution. Subsequently, Sindhi was added in 1967
- Konkani, Manipuri and Nepali were added in 1992;
- Bodo, Dogri, Maithili and Santali were added by the **92nd Amendment Act of 2003**.

#### Classical Languages:

- Currently, six languages enjoy the 'Classical' status: Tamil (declared in 2004), Sanskrit (2005), Kannada (2008), Telugu (2008), Malayalam (2013), and Odia (2014).
- All the Classical Languages are listed in the Eighth Schedule of the Constitution.
- The guidelines for declaring a language as 'Classical' are:
- High antiquity of its early texts/recorded history over a period of 1500-2000 years.
- A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers.
- The literary tradition is original and not borrowed from another speech community.
- The classical language and literature being distinct from modern, there may also be a discontinuity between the classical language and its later forms or its offshoots.
- Criteria to include Eighth Schedule
- There is no fixed criteria for any language to be considered for inclusion in the Eighth Schedule.
- The problem is that as the evolution of dialects and languages is dynamic, influenced by socio-eco-political developments, it is difficult to fix any criterion for languages, whether to distinguish them from dialects.

### Ninth Schedule:

- It was added to the Constitution by the **Constitution (First Amendment) Act, 1951**.
- The object behind adding the Ninth schedule was **to protect certain acts and regulations from being declared void** on the ground that they violate the fundamental rights provided under **Part III of the Constitution**.

### Tenth Schedule:

- It contains provisions **relating to the disqualification** of the members of Parliament and State Legislatures on the ground of defection.
- The Tenth Schedule was added by the **Constitution (Fifty-second Amendment) Act, 1985** to combat the evil of political defections and is also called the Anti-defection Law.

### Eleventh Schedule:

- It was added to the Constitution by **Constitution (seventy-third Amendment) Act, 1992**,
- the Eleventh Schedule deals with, **the powers, authority, and responsibilities of Panchayats**.
- It contains 29 functional items of the panchayats, some of which are Agriculture, Land improvement, implementation of land reforms, land consolidation and soil conservation, etc.

### Twelfth Schedule:

- It deals with **the powers, authorities, and responsibilities of the municipalities**.
- It was also added by the **Constitution (Seventy-fourth Amendment) Act, 1992**.
- It contains 18 functional items of the municipalities that are Urban planning, including town planning, Regulation of land use and construction of buildings, etc.